

## § 41.25

under any other Federal programs for which it may qualify.

### § 41.25 Reports.

The Navajo Community College shall provide the Director of Education on or before September 1st of each year a report which shall include an accounting of the amounts and purposes for which financial assistance under this subpart was expended during the preceding academic year, the annual cost of the education programs of the College from all sources for such academic year, and a final report of the performance based upon the criteria set forth in the College's stated goals, philosophy or plan of operation. Upon reasonable cause, the Director of Education may extend the period for submitting the annual report. The college shall in addition report to the Director of Education its FTE Indian Student enrollment for each academic term of the academic year within three weeks of the date such FTE calculation is made.

### § 41.26 Technical assistance.

The Director of Education shall furnish technical assistance, either directly or through contract, to the College when requested in writing. Such assistance shall be initiated within thirty (30) days of the College's request. In any case in which the form and source of technical assistance is specified in the request, the Director of Education shall to the extent possible or feasible provide technical assistance in the form requested and through the source so specified. Technical assistance may include, but is not limited to, consulting services in the development of annual statements and reports required under this subpart and accounting, and other technical advice and assistance.

### § 41.27 General provisions.

The general requirements for grant administration in this section are applicable to all grants provided under this subpart to the Navajo Community College.

(a) Services or assistance provided to Indians by the College with the financial assistance provided under this subpart shall be provided in a fair and uniform manner, and admission to the

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College shall not be denied any Indian student because such individual is not a member of a specific Indian tribe or because such individual is a member of a specific Indian tribe.

(b) Except as may be otherwise provided in this subpart, the College shall comply with part 276 of this title, subject to express waiver of specific inappropriate provisions of part 276 that may be granted, after request and justification by the College by the Assistant Secretary.

(c) In addition to any other right the college may have under this subpart, the College shall have the right to appeal any adverse decision of the Director of Education under a grant agreement to the Assistant Secretary by filing written notice of appeal with the Assistant Secretary within thirty (30) days of the adverse decision. Within thirty (30) days after receiving notice of appeal, the Assistant Secretary shall conduct a formal hearing at which time the College may present evidence and argument to support its appeal. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling on the appeal confirming, modifying or reversing the decision of the Director of Education. In the case of a ruling not reversing the Director of Education's decision, the Assistant Secretary shall state in detail the basis for his/her ruling. The ruling of the Assistant Secretary on an appeal shall be final for the Department of the Interior.

### § 41.28 Criminal penalties.

Persons submitting or causing to be submitted to the Bureau any false information in connection with any application, report, or other document, upon which the provision of the Federal financial assistance, or any other payment of Federal funds, is based, may be subject to criminal prosecution under provisions such as sections 287, 371, or 1001 of title 18, U.S. Code.

## PART 42—STUDENT RIGHTS

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AUTHORITY: 5 U.S.C. 301, Pub. L. 107-110, 115 Stat. 1425.

SOURCE: 70 FR 22218, Apr. 28, 2005, unless otherwise noted.

### § 42.1 What general principles apply to this part?

(a) This part applies to every Bureau-funded school. The regulations in this part govern student rights and due process procedures in disciplinary proceedings in all Bureau-funded schools. To comply with this part, each school must:

(1) Respect the constitutional, statutory, civil and human rights of individual students; and

(2) Respect the role of Tribal judicial systems where appropriate.

(b) All student rights, due process procedures, and educational practices should, where appropriate or possible, afford students consideration of and rights equal to the student's traditional Native customs and practices.

### § 42.2 What rights do individual students have?

Individual students at Bureau-funded schools have, and must be accorded, at least the following rights:

(a) The right to an education that may take into consideration Native American or Alaska Native values;

(b) The right to an education that incorporates applicable Federal and Tribal constitutional and statutory protections for individuals; and

(c) The right to due process in instances of disciplinary actions.

### § 42.3 How should a school address alleged violations of school policies?

(a) In addressing alleged violations of school policies, each school must consider, to the extent appropriate, the reintegration of the student into the school community.

(b) The school may address a student violation using alternative dispute resolution (ADR) processes or the formal disciplinary process.

(1) When appropriate, the school should first attempt to use the ADR processes described in § 42.4 that may allow resolution of the alleged violation without recourse to punitive action.

(2) Where ADR processes do not resolve matters or cannot be used, the school must address the alleged violation through a formal disciplinary proceeding under § 42.7 consistent with the due process rights described in § 42.7.

### § 42.4 What are alternative dispute resolution processes?

Alternative dispute resolution (ADR) processes are formal or informal processes that may allow resolution of the violation without recourse to punitive action.

(a) ADR processes may:

(1) Include peer adjudication, mediation, and conciliation; and

(2) Involve appropriate customs and practices of the Indian Tribes or Alaska Native Villages to the extent that these practices are readily identifiable.

(b) For further information on ADR processes and how to use them, contact the Office of Collaborative Action and Dispute Resolution by:

(1) Sending an e-mail to: [cadr@ios.doi.gov](mailto:cadr@ios.doi.gov); or

(2) Writing to: Office of Collaborative Action and Dispute Resolution, Department of the Interior, 1849 C Street NW., MS 5258, Washington, DC 20240.

### § 42.5 When can a school use ADR processes to address an alleged violation?

(a) The school may address an alleged violation through the ADR processes described in § 42.4, unless one of the conditions in paragraph (b) of this section applies.

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(b) The school must not use ADR processes in any of the following circumstances:

(1) Where the Act requires immediate expulsion ("zero tolerance" laws);

(2) For a special education disciplinary proceeding where use of ADR would not be compatible with the Individuals with Disabilities Education Act (Pub. L. 105-17); or

(3) When all parties do not agree to using alternative dispute resolution processes.

(c) If ADR processes do not resolve matters or cannot be used, the school must address alleged violations through the formal disciplinary proceeding described in § 42.8.

### **§ 42.6 When does due process require a formal disciplinary hearing?**

Unless local school policies and procedures provide for less, a formal disciplinary hearing is required before a suspension in excess of 10 days or expulsion.

### **§ 42.7 What does due process in a formal disciplinary proceeding include?**

Due process must include written notice of the charges and a fair and impartial hearing as required by this section.

(a) The school must give the student written notice of charges within a reasonable time before the hearing required by paragraph (b) of this section. Notice of the charges includes:

(1) A copy of the school policy allegedly violated;

(2) The facts related to the alleged violation;

(3) Information about any statements that the school has received relating to the charge and instructions on how to obtain copies of those statements; and

(4) Information regarding those parts of the student's record that the school will consider in rendering a disciplinary decision.

(b) The school must hold a fair and impartial hearing before imposing disciplinary action, except under the following circumstances:

(1) If the Act requires immediate removal (such as, if the student brought a firearm to school) or if there is some other statutory basis for removal;

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(2) In an emergency situation that seriously and immediately endangers the health or safety of the student or others; or

(3) If the student (or the student's parent or guardian if the student is less than 18 years old) chooses to waive entitlement to a hearing.

(c) In an emergency situation under paragraph (b)(2) of this section, the school:

(1) May temporarily remove the student;

(2) Must immediately document for the record the facts giving rise to the emergency; and

(3) Must afford the student a hearing that follows due process, as set forth in this part, within ten days.

### **§ 42.8 What are a student's due process rights in a formal disciplinary proceeding?**

A student has the following due process rights in a formal disciplinary proceeding:

(a) The right to have present at the hearing the student's parents or guardians (or their designee);

(b) The right to be represented by counsel (legal counsel will not be paid for by the Bureau-funded school or the Secretary);

(c) The right to produce, and have produced, witnesses on the student's behalf and to confront and examine all witnesses;

(d) The right to the record of the disciplinary action, including written findings of fact and conclusions;

(e) The right to administrative review and appeal under school policy;

(f) The right not to be compelled to testify against himself or herself; and

(g) The right to have an allegation of misconduct and related information expunged from the student's school record if the student is found not guilty of the charges.

### **§ 42.9 What are victims' rights in formal disciplinary proceedings?**

In formal disciplinary proceedings, each school must consider victims' rights when appropriate.

(a) The victim's rights may include a right to:

(1) Participate in disciplinary proceedings either in writing or in person;

(2) Provide a statement concerning the impact of the incident on the victim; and

(3) Have the outcome explained to the victim and to his or her parents or guardian by a school official, consistent with confidentiality.

(b) For the purposes of this part, the victim is the actual victim, not his or her parents or guardians.

**§ 42.10 How must the school communicate individual student rights to students, parents or guardians, and staff?**

Each school must:

(a) Develop a student handbook that includes local school policies, definitions of suspension, expulsion, zero tolerance, and other appropriate terms, and a copy of the regulations in this part;

(b) Provide all school staff a current and updated copy of student rights and responsibilities before the first day of each school year;

(c) Provide all students and their parents or guardians a current and updated copy of student rights and responsibilities every school year upon enrollment; and

(d) Require students, school staff, and to the extent possible, parents and guardians, to confirm in writing that they have received a copy and understand the student rights and responsibilities.

**§ 42.11 Information collection.**

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part in §§ 42.6, 42.7, and 42.9 contains collections of information subject to the PRA. These collections have been approved by OMB under control number 1076-0163.

**PART 43—MAINTENANCE AND CONTROL OF STUDENT RECORDS IN BUREAU SCHOOLS**

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**§ 43.1 Purpose and scope.**

This part contains the regulations of the Bureau of Indian Affairs, U.S. Department of the Interior, governing the maintenance, control, and accessibility of student records. This part will apply to all educational institutions under the jurisdiction of the Bureau of Indian Affairs, whether operated under contract or otherwise.

**§ 43.2 Definitions.**

As used in this part:

(a) *Assistant Secretary* means the Assistant Secretary—Indian Affairs, Department of the Interior.

(b) *Educational institution* means any institution operated under the jurisdiction of the Bureau of Indian Affairs either directly or by contract, including, but not limited to, schools or dormitories from which Indian students attend public schools.